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21 UNITED STATES DISTRICT COURT
22
23 FOR THE CENTRAL DISTRICT OF CALIFORNIA

24 UNITED STATES OF AMERICA,
25 Plaintiff,
26 v.
27 PHILIP ALAN DRECHSLER,
28 Defendant.

No. CR 23-216-RGK

GOVERNMENT'S OPPOSITION TO
DEFENDANT PHILIP ALAN DRECHSLER'S
APPLICATION FOR
REVIEW/RECONSIDERATION OF ORDER
SETTING CONDITIONS OF
RELEASE/DETENTION (18 U.S.C.
§ 3142)

29
30 Plaintiff United States of America, by and through its counsel
31 of record, the United States Attorney for the Central District of
32 California and Assistant United States Attorneys Bruce Riordan and
33 Kellye Ng, hereby files the Government's Opposition to Defendant
34 PHILIP ALAN DRECHSLER's Application for Review/Reconsideration of an
35 Order Setting Conditions of Detention.

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This Opposition is based upon the attached memorandum of points and authorities, the files and records in this case, and such further evidence and argument as the Court may permit.

Dated: February 13, 2024

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On June 6, 2023, United States Magistrate Judge Alka Sagar found that no conditions or combination of conditions would reasonably assure defendant PHILIP ALAN DRECHSLER's ("defendant") appearance in this case, as required, or the safety of any person or the community at large. (Dkt. 22 at 2.) Despite repeated requests for reconsideration, as detailed below, Judge Sagar has ordered that defendant remained detained.¹

Now, defendant seeks this Court's review of the prior detention orders. As described herein, there is nothing in defendant's current Application for Reconsideration of the Order Setting Detention, (Dkt Nos. 61, 64), that disturbs the wisdom and the propriety of the original detention ruling.²

Defendant, a 61-year-old former journalist, is charged with distributing child pornography in a private Telegram chatroom called "The Playground Lives." On April 6, 2023, the FBI executed a search at defendant's home seeking evidence related to child pornography violation, seized numerous digital devices pursuant to the warrant and interviewed defendant, who was present during the search. (Dkt. 1 ¶ 22.) Less than two weeks after his encounter with the FBI -- knowing that he was under investigation for child exploitation charges--defendant secured his firearms in his car, drove from Los Angeles County to Ohio, and expressed suicidal ideations. (Id.

¹ With the exception, as described below, of a one-day temporary release on December 14, 2023 authorized by Judge Sagar under strict supervision by law enforcement and Pre-Trial Services.

² In addition to this proffer, the government also proffers the prior Pre-Trial Services Reports in this matter wherein the Pre-Trial Services Officers assigned to this matter recommended detention.

1 ¶ 25.) Indeed, defendant's subsequently obtained journal entries
2 reveal how close he was to committing suicide. (See Declaration of
3 Kellye Ng, ¶ 2, Ex. A, at USAO_000272-73, 275-77; located at Dkt. No.
4 36.)

5 Because of the defendant's danger to himself and to the
6 community, the government filed an after-hours complaint on April 18,
7 2023. (Dkt. 1.) After a tense but brief standoff during which
8 defendant was armed with a loaded gun, defendant ultimately
9 surrendered to law enforcement at his Ohio hotel. (Ng Decl. ¶ 3, Ex.
10 B at 1.; Dkt. No. 35.) Defendant conveyed to the arresting officers
11 that he had contemplated three options: commit suicide, run, or
12 surrender. (*Id.*) Subsequently, defendant was indicted in this
13 District.

14 This Court should deny defendant's current application because
15 he fails to rebut the presumption of detention under 18 U.S.C.
16 § 3142(e)(3), especially where defendant is presently charged under
17 18 U.S.C. § 2252A(a)(2)(A). Moreover, there are no conditions or
18 combination of conditions that will reasonably assure either
19 defendant's appearance or the community's safety. No new information
20 refutes these findings, particularly considering: (1) the nature of
21 the charges; and (2) the prospect that defendant will serve a
22 substantial term of imprisonment upon conviction -- specifically, a
23 five-year mandatory minimum sentence for his distribution of child
24 pornography charges. See 18 U.S.C. § 2252A(a)(2)(A), (b)(1).

25 **II. PROCEDURAL HISTORY**

26 On April 19, 2023, defendant made his initial appearance on the
27 complaint in the Southern District of Ohio and the Court ordered him
28 detained. On May 30, 2023, defendant made his initial appearance in

1 the Central District of California. (Dkt. 13.) At the continued
2 detention hearing on June 6, 2023, Judge Sagar ordered that defendant
3 be detained pending trial. (Dkt. 22.)

4 In its Order, the court found no conditions or combination of
5 conditions that would reasonably assure the safety of the community
6 and the appearance of the defendant as required. (Id. at 2.)

7 Specifically, the court found that detention was warranted by:

8 (1) the lack of suitable residence and oversight (suitable staffing);
9 (2) mental health concerns; (3) defendant's possession of a loaded
10 firearm at the time of his arrest; (4) defendant's statements
11 regarding his suicidal ideations, access to firearms, and mental
12 health concerns; and (5) the allegations in the present charging
13 document. (See generally Dkt. 22.)

14 On September 1, 2023, defendant filed his first application for
15 reconsideration of Magistrate Judge Sagar's order of detention (the
16 "First Application"). (Dkt. 27.). This Court referred the First
17 Application to Magistrate Judge Sagar for consideration. The
18 government opposed defendant's First Application. (See Dkt. Nos. 31
19 through 36.). In support of its opposition to the First Application,
20 the government filed a memorandum of points and authorities (Dkt. No
21 31), as well as a declaration of government counsel and exhibits.
22 (Dkt. Nos. 35, 36). Due to the confidential and sensitive nature of
23 the matters discussed in the opposition, the unredacted memorandum,
24 unredacted declaration and unredacted exhibits were filed under
25 seal.³

26

27 ³ The government incorporates herein by reference its opposition
28 to the First Application, as well as the Declaration of Kellye Ng and
its exhibits. (Dkt. Nos 31, 35 and 36.).

1 Magistrate Judge Sagar held an initial hearing on the First
2 Application on September 6, 2023, took the matter under submission,
3 and set a further status conference for September 15, 2023. (Dkt.
4 37.) Pursuant to her prior orders, defendant remained in custody.
5 On September 14, 2023, defendant filed a renewed *ex parte* application
6 for an order for "temporary release" to allow defendant to conduct
7 certain personal and legal affairs (the "Second Application"). Judge
8 Sagar held a hearing on September 15, 2023 and a subsequent hearing
9 on October 13, 2023, where she denied the Second Application,
10 rejecting defendant's application for temporary release. However, in
11 order to accommodate defendant's request to address certain legal and
12 financial affairs, Judge Sagar instructed the parties to meet and
13 confer in good faith with respect to proposing strict terms and
14 conditions of a one-day temporary release to meet with his counsel
15 under the supervision of both law enforcement and Pre-Trial Services.

16 The one-day temporary release was successfully completed on
17 December 14, 2023 at the Santa Ana Federal Courthouse. On the
18 morning, of December 14, 2023, pursuant to Magistrate Judge Sagar's
19 order, FBI agents transported defendant from the custody of the Santa
20 Ana Jail to a meeting room in the Federal Courthouse where defendant
21 could confer with his counsel and make personal financial arrangement
22 under supervision. In the afternoon of December 14, the FBI agents
23 transported defendant back to the custody of the Santa Ana Jail.

24 Defendant is currently in custody at the Santa Ana Jail pursuant
25 to Judge Sagar's order.

26 **III. DEFENDANT SHOULD REMAIN DETAINED PENDING TRIAL**

27 Defendant's current application for reconsideration of pretrial
28 detention should be denied because, as in the prior applications, he

1 fails to overcome the presumption of detention applicable to his
 2 distribution of child pornography charges; he remains a danger to the
 3 community; he remains a risk of nonappearance; and -- against this
 4 record -- his proposed terms and conditions fail to warrant
 5 reconsideration of Magistrate Judge Sagar's well-considered detention
 6 orders.

7 **A. Legal Standards for Pretrial Detention, Including the
 8 Statutory Presumption in Favor of Detention**

9 A defendant must be detained pending trial where "no condition
 10 or combination of conditions will reasonably assure the appearance of
 11 the person as required and the safety of any other person and the
 12 community." 18 U.S.C. § 3142(e)(1). Detention is thus appropriate
 13 where a defendant is either a danger to the community or a flight
 14 risk. United States v. Motamedi, 767 F.2d 1403, 1406 (9th Cir.
 15 1985). In the typical case, "the government bears the burden of
 16 showing by a preponderance of the evidence that the defendant poses a
 17 flight risk, and by clear and convincing evidence that the defendant
 18 poses a danger to the community." United States v. Gebro, 948 F.2d
 19 1118, 1121 (9th Cir. 1991) (citing Motamedi, 767 F.2d at 1406-07).
 20 But where, as here, there is probable cause to believe that defendant
 21 committed an offense under 18 U.S.C. § 2252(A)(a)(2)(A), it is
 22 "presumed that no condition or combination of conditions will
 23 reasonably assure the appearance of the person as required and the
 24 safety of the community." 18 U.S.C. § 3142(e)(3)(E).

25 Categorical grants or denials of bail, untethered from an
 26 individualized determination, are impermissible. United States v.
 27 Diaz-Hernandez, 943 F.3d 1196, 1199 (9th Cir. 2019). That is because
 28 "the Bail Reform Act mandates an individualized evaluation guided by

1 the factors articulated in § 3142(g)." Id. Those factors are:

- 2 (1) the nature and circumstances of the offense charged;
- 3 (2) the weight of the evidence against the defendant;
- 4 (3) the defendant's character, physical and mental condition, family and community ties, past conduct, history relating to drug or alcohol abuse, criminal history; and
- 5 (4) the nature and seriousness of the danger to any person or to the community that would be posed by the defendant's release. 18 U.S.C. § 3142(g).

8 United States v. Winsor, 785 F.2d 755, 757 (9th Cir. 1986) (per
9 curiam) (citation omitted). Consideration of non-statutory factors
10 is disfavored. Diaz-Hernandez, 943 F.3d at 1199.

11 Under 18 U.S.C. § 3142(f)(2), a detention hearing may be
12 reopened "if the judicial officer finds that information exists that
13 was not known to the movant at the time of the hearing and that has a
14 material bearing on the issue whether there are conditions of release
15 that will reasonably assure the appearance of such person as required
16 and the safety of any other person and the community."

17 1. Defendant Is Charged with Serious Crimes, Including
18 Distribution of Child Pornography

19 Defendant distributed child pornography in a private Telegram
20 chatroom called, "The Playground Lives." The seriousness of
21 defendant's offenses is underscored by the penalties Congress has
22 imposed for these crimes: a mandatory minimum of five years'
23 incarceration for distribution of child pornography and potentially
24 higher given the recently uncovered conduct regarding an actual minor
25 victim described in Section 3 below. The penalties reflect the
26 seriousness of the crimes and the danger defendant poses to the
27 community, as well as provide an incentive for defendant to flee if
28 released pending trial.

1 2. The Weight of the Evidence is Overwhelming

2 Defendant distributed the child sex abuse material ("CSAM") as
 3 described in detail in the complaint and indictment. (Dkt. 1 ¶ 19;
 4 Dkt. 7.) Indeed, defendant wrote about his conduct in his own
 5 journal entries. (Id. ¶ 2, Ex. A at USAO_000274 ("Why are companies
 6 like TikTok/Meta/Instagram allowed to store and distribute tons of
 7 images and videos to millions of people with sophisticated algorithms
 8 that feed addiction . . . without consequence?? It's classic . . .
 9 punish the addict, but the dealer is untouchable.")); id. at 271 ("My
 10 sins were in my mind and on the Internet") A preliminary
 11 review of defendant's digital device during the search showed
 12 apparent CSAM in his "recently deleted" photo album. (Dkt. 1 ¶ 22.)

13 Moreover, subpoena records show that defendant's Telegram
 14 account listed a Google Voice number that traced back to defendant.
 15 (Id. ¶ 14.)

16 3. Defendant's Personal Characteristics and Conduct
 17 Indicate that He is a Danger to the Community

18 While the defendant has no prior convictions, his personal
 19 characteristics and conduct indicate that he is a danger to the
 20 Community. First, as established with Magistrate Judge Sagar,
 21 defendant's own journal entries show how close he was to committing
 22 harm to himself. Defendant's agreement to give up his firearms and
 23 ammunition does not resolve the issue of the danger he poses to
 24 himself or to the community. Despite the best drafted terms and
 25 conditions of release, defendant could not be trusted to not seek to
 26 access weapons or other items that may be used to commit harm to
 27 himself or others. (See generally Dkt. 27.) Defendant's ability to

1 lead a double life over a long period of his adult life, makes him
2 uncondusive to effective supervision, if released. The person who
3 may know him best, M.D., has represented that she is terrified that
4 defendant will show up at her door if released. (See Ng Decl. ¶ 4,
5 Ex. C at 1.; Dkt. 35.)

6
7 The government understands that defendant has received a mental-
8 health evaluation while in custody, (Dkt. 64 at p. 5), and is
9 cognizant of efforts to maintain his "health and well-being" in
10 custody. To this point, government counsel has assisted defendant
11 and his counsel in obtaining a court order to move defendant from
12 MDC-LA to the Santa Ana jail and in coordinating the transfer with
13 the United States Marshal's Service and the Santa Ana Jail where his
14 health and well-being have been considerably improved. There is no
15 evidence that any aspect of his current confinement supports
16 reconsideration of the Magistrate Court's prior rulings.

17 Indeed, there is nothing unusual about Magistrate Judge Sagar's
18 decision, made after substantial fact-finding on her part, to detain
19 defendant. Courts frequently are compelled to detain defendants
20 accused of child exploitation crimes, even when the defendant has
21 little or no criminal history. See United States v. Abad, 350 F.3d
22 793, 798-99 (8th Cir. 2003) (noting even though the defendant had no
23 prior criminal history, "the nature of the crime charged - sexual
24 activity with a minor" - weighs heavily against release); United
25 States v. Mercedes, 254 F.3d 433, 438 (2d Cir. 2001) (reversing the
26 decision of the district court to release the defendant even without
27 a prior criminal record where crime victim was a minor); United
28 States v. Gaw, 2013 WL 5979625, *3 (N.D. Cal. Nov. 8, 2013)

1 (detaining employed defendant with no criminal history because the
2 evidence showed that he received child pornography and used social
3 media site to induce minor to create child pornography).

4 Moreover, since the time the detention orders were made in this
5 case, the government's investigation continued with the painstaking
6 review of the digital devices and digital data seized pursuant to the
7 federal warrants obtained in this matter. This review, conducted by
8 the case agent, FBI Agent Chelsea Malone, has uncovered at least one
9 actual minor victim with whom defendant made contact through Snapchat
10 videos on the Snapchat application. During those Snapchat video
11 chats, defendant engaged in sexually explicit conduct with H.R. that
12 may give rise to additional charges.⁴ This conduct occurred in and
13 around sometime between 2021 and 2022 while the minor victim, a 12
14 year old identified by FBI as H.R., was residing in Idaho and
15 defendant was residing in Los Angeles County. Recently, Agent Malone
16 conducted a Child Adolescent Forensic Interview, also known as CAFI
17 interview, with H.R. in Idaho and H.R. identified a driver's license
18 photo of defendant as the man who H.R. knew as "Phil."⁵

19 For all of these reasons, there are no conditions of release
20 that would adequately protect the safety of the community here.

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26 ⁴ Defendant's proficiency with online platforms such as the
27 Telegram App and Snapchat serves to underline the concern that no
28 conditions or terms will successfully mitigate his ability to present
a danger to the community.

⁵ This discovery has been made available to defendant and his
counsel and can be shared with the Court if requested.

1 4. Defendant's Proposed Bond Does Not Mitigate the Risk
 2 of Danger

3 In his application, defendant proposes a \$15,000 appearance bond
 4 signed by his cousin, Jon Werner; a \$20,000 cash deposit⁶; home
 5 incarceration; no Internet-enabled devices; no firearms; among other
 6 conditions.⁷ (Dkt. 64.)

7 But even significant bond resources do nothing to eliminate the
 8 risk of danger to the community. See Rep. No. 225, 98th Congress,
 9 1st Sess. 1983, 1984 U.S.C.A.N. 3182, 3198-99 (n.60) (Congress
 10 finding that "a defendant who is a danger to the community remains
 11 dangerous even if he has posted a substantial money bond").

12 Similarly, defendant's proposed monitoring conditions could not
 13 reliably prevent him from accessing other means to harm himself or
 14 others, or accessing the Internet via devices belonging to other
 15 persons. In light of the "myriad Internet-capable devices available,
 16 including those that work with data plans rather than WiFi access,
 17 render[] policing [defendant's] Internet use almost impossible."
 18 Cornish, 449 F. Supp. 3d at 686-87 (finding that bond conditions
 19 could not sufficiently mitigate the danger defendant posed to the
 20 community, and children in particular, if he was released); see also
 21 United States v. Ritterhoff, 11-CR-1955-WJ, 2011 WL 13289664, *3-4
 22 (D. N.M. Aug. 8, 2011) (reversing the magistrate court's order
 23 setting conditions of release and remanding defendant to custody,

24
 25 ⁶ M.D., defendant's estranged spouse, has indicated that
 26 defendant has no liquid cash and that he should not be moving assets
 27 from their savings account while their divorce proceedings are
 28 pending. (Ng Decl. ¶ 4, Ex. C at 1.) She also noted that if
 defendant were to access his retirement, he would be required to use
 the Internet. (See id.)

7 The proposed terms, in large measure, track the terms and
 conditions defendant proposed in his First Application. (Dkt 27.)

1 reasoning that no conditions could reasonably assure defendant's
2 appearance and safety of the community where defendant attempted to
3 entice minors on the Internet because the ubiquity of Internet access
4 made it virtually impossible to prevent defendant from using it);
5 United States v. Reiner, 468 F. Supp. 2d 393, 398-99 (E.D.N.Y. 2006)
6 ("In this day and age, with devices such as cellphones, Blackberries,
7 and laptops, there are no conditions which can reasonably assure the
8 safety of the community under the particular circumstances of this
9 case if the defendant is released on bail."). Punitive felony
10 criminal statutes were not enough to deter defendant from
11 participating in distribution of child pornography in private
12 chatrooms and from counseling other chatroom members to evade law
13 enforcement detection; there is little reason to think that a
14 (largely unenforceable) bond condition will be more effective.

15 In sum, as to danger to the community, defendant has not
16 identified the type of change in circumstances that would warrant a
17 change in the Court's previous ruling.

18 5. Defendant Poses a Risk of Nonappearance

19 The Pretrial Services Reports prepared for defendant also
20 support the Magistrate Judge's finding that defendant he poses a risk
21 of nonappearance. After law enforcement conducted a search at his
22 home and seized his digital devices,⁸ defendant expressed suicidal
23 ideations and instructed his spouse to donate his belongings. (Dkt.
24 1 ¶ 25.) Therefore, days after the search--when defendant knew that
25 he was under investigation for distributing child pornography--he

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⁸ As noted in the complaint, a preliminary review of defendant's
28 device showed what appeared to be CSAM in the "recently deleted"
photo album folder.

1 grabbed his firearms and ammunition, and drove from Los Angeles
2 County to Ohio to visit his parents' gravesite one last time. (Id.
3 ¶ 25.) Defendant's journal entries speak for themselves. (See Ng
4 Decl. ¶ 2, Ex. A, at USAO_000272-73, 275 ("my gun is 2 feet from my
5 hand and it is taking all my strength not to use it"); "I hope my
6 high blood pressure kills me before I do."); ("so if an arrest is
7 imminent what do I do? Die or not die?" and listing pros and cons of
8 death). Defendant poses a continued risk of nonappearance if
9 released into the community.

10 Additionally, in defendant's own Telegram communications,
11 defendant instructed other chatroom members how to evade law
12 enforcement detection (Dkt. 1 ¶ 19) and wrote in his journal about
13 needing to delete his Snap, Instagram, and Twitter accounts (Ng Decl.
14 ¶ 2, Ex. A, at USAO_000279). Defendant cannot now be entrusted to
15 comply with the Court's and Pretrial Service's orders.

16 Defendant also faces a statutorily required, mandatory minimum
17 sentence of five years' imprisonment and a maximum penalty of twenty
18 years' imprisonment. The possibility of a lengthy prison sentence
19 may motivate defendant to flee. See United States v. Townsend, 897
20 F.2d 989, 994-95 (9th Cir. 1990) (holding that the district court
21 properly considered "penalties possible under the present indictment"
22 as providing an "incentive to consider flight," and noting that
23 electronic monitoring cannot assure prevention of flight).

24 Because of defendant's potential for violent self-harm, his
25 instructions to other Telegram chat users on how to evade law
26 enforcement detection, the risk that he will access the internet to
27 engage in behavior similar to the charged offenses and the
28

1 significant prison length he faces, defendant's risk of nonappearance
2 cannot be mitigated.

3 **IV. CONCLUSION**

4 Nothing in defendant's application overcomes the statutory
5 presumption in favor of detention, and nothing justifies
6 reconsideration of the Magistrate Judge's prior, well-reasoned
7 findings and decision. For these reasons, the government
8 respectfully requests that this Court deny defendant's current
9 application for reconsideration of the prior detention orders.

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